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DEPARTMENT OF COMMERCE

International Trade Administration

A-570-851

Certain Preserved Mushrooms from the People's Republic of China: Notice of Court Decision Not in Harmony with Final Results and Notice of Amended Final Results of the Antidumping Duty Administrative Review; 2009-2010

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: On August 28, 2014, the United States Court of International Trade (the Court) issued final judgment in *Xiamen International Trade and Industrial Co., Ltd. et al. v. United States*, Court No. 11-00411, sustaining the Department of Commerce's (the Department's) final results of redetermination pursuant to remand.¹ In the *Remand Results*, the Department recalculated the weighted-average dumping margin for Xiamen International Trade and Industrial Co., Ltd. (XITIC) using a revised surrogate value for lime and a revised calculation of labor and financial ratios.² The Department also recalculated the dumping margin for two respondents not selected for individual examination – Zhejiang Iceman Group Co., Ltd. (Iceman Group) and Fujian Golden Banyan Foodstuffs Industrial Co., Ltd. (Golden Banyan) because their dumping margin was based in part upon XITIC's dumping margin, which changed on remand.³ Consistent with the decision of the United States Court of Appeals for the Federal Circuit (Federal Circuit) in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), as

¹ See Final Results of Redetermination Pursuant to Court Remand, Certain Preserved Mushrooms from the People's Republic of China, *Xiamen Int'l Trade & Indus. Co., Ltd. et al. v. United States*, Court No. 11-00411, Slip Op. 13-152 (CIT December 20, 2013), dated April 21, 2014 (*Remand Results*), available at <http://enforcement.trade.gov/remands/index.html>.

² See generally *Remand Results*.

³ *Id.*

clarified by *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*), the Department is notifying the public that the final judgment in this case is not in harmony with the Department's final results of the antidumping duty administrative review of certain preserved mushrooms from the People's Republic of China (PRC) covering the period February 1, 2009, through January 31, 2010, and is amending the amended final results with respect to the weighted-average dumping margins assigned to XITIC, Iceman Group, and Golden Banyan.⁴

EFFECTIVE DATE: September 8, 2014.

FOR FURTHER INFORMATION CONTACT: Scott Hoefke or Davina Friedmann, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482-4947 or (202) 482-0698, respectively.

SUPPLEMENTARY INFORMATION:

On September 14, 2011, the Department issued the *Final Results*.⁵ On November 10, 2011, it issued the *Amended Final Results*.⁶ XITIC, Iceman Group, and Golden Banyan, exporters of subject merchandise, timely filed complaints with the Court to challenge certain aspects of the *Final Results* and *Amended Final Results*. Specifically, XITIC challenged the Department's selection of surrogate values for fresh mushrooms, mushroom spawn, and lime. XITIC also argued that the Department should have applied its revised labor methodology, instead of its interim labor methodology, when calculating XITIC's surrogate labor rates and

⁴ See *Certain Preserved Mushrooms From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission in Part*, 76 FR 56732 (September 14, 2011) (*Final Results*), as amended, *Certain Preserved Mushrooms From the People's Republic of China: Amended Final Results of Antidumping Duty Administrative Review*, 76 FR 70112 (November 10, 2011) (*Amended Final Results*).

⁵ See *Final Results*.

⁶ See *Amended Final Results*.

financial ratios.⁷ Finally, XITIC challenged the Department's decision to interpret section 771(35) of the Tariff Act of 1930, as amended (the Act), differently in administrative reviews from the manner in which it interprets that same provision in investigations.⁸

Iceman Group argued that the Department unlawfully assigned it a separate rate. Finally, Iceman Group and Golden Banyan argued that the Department's separate rate calculation erroneously included the 266.13 percent partial adverse facts available rate of Guangxi Jisheng Foods, Inc. (Jisheng) because that dumping margin calculated for Jisheng was higher than the rate assigned to the PRC-wide entity.

On December 20, 2013, the Court remanded the Department's *Final Results* and *Amended Final Results* and instructed the Department to reconsider (1) the calculation of XITIC's surrogate values for mushroom spawn and lime, (2) the calculation of XITIC's labor rate and financial ratios, and (3) the inclusion of Jisheng's dumping margin in the calculation of the separate rate for Iceman Group and Golden Banyan.⁹ However, the Court upheld the Department's calculation of the surrogate value for XITIC's fresh mushrooms and its determination to assign Iceman Group a separate rate.¹⁰

On April 21, 2014, the Department filed its remand results with the Court, in which it used a revised surrogate value for lime and recalculated XITIC's labor rate and financial ratios using the revised labor methodology.¹¹ The Department further explained its decisions in the *Final Results* to calculate the surrogate value for XITIC's mushroom spawn using Global Trade Atlas data and

⁷ On appeal, the Department acknowledged that it erred in applying the interim labor methodology and requested a voluntary remand to employ the revised labor methodology.

⁸ After the Federal Circuit issued its decision in *Union Steel v. United States*, 713 F.3d 1101 (Fed. Cir. 2013), XITIC abandoned this claim.

⁹ See, generally, *Xiamen Int'l Trade & Indus. Co., Ltd. v. United States*, 953 F. Supp. 2d 1307 (Ct. Int'l Trade 2013).

¹⁰ *Id.*

¹¹ See *Remand Results* at 3-6, 12-14.

to include Jisheng's dumping margin in the separate rate calculation.¹² As a result of the changes to XITIC's calculations, XITIC's margin changed from 13.12 percent to 5.76 percent.¹³ Because the separate rate assigned to Iceman Group and Golden Banyan was based in part upon XITIC's dumping margin, the separate rate assigned to those exporters also changed from 76.12 percent to 74.14 percent.¹⁴

On August 28, 2014, the Court entered judgment sustaining the Department's *Remand Results*.¹⁵

Timken Notice

In its decision in *Timken*, 893 F.2d at 341, as clarified by *Diamond Sawblades*, the Federal Circuit held that, pursuant to section 516A(e) of the Act, the Department must publish a notice of a court decision not "in harmony" with a Department determination, and must suspend liquidation of entries pending a "conclusive" court decision. The Court's August 28, 2014, judgment sustaining the *Remand Results* constitutes a final decision of the Court that is not in harmony with the Department's *Amended Final Results*. This notice is published in fulfillment of the publication requirement of *Timken*.

Amended Final Results

Because there is now a final court decision, the Department amends the *Final Results* and *Amended Final Results* with respect to XITIC, Golden Banyan, and Iceman Group. The revised weighted-average dumping margins for these exporters during the period February 1, 2009, through January 31, 2010 follows:

¹² *Id.*, at 6-12, 14-21.

¹³ *Id.*, at 14.

¹⁴ *Id.*, at 16-17.

¹⁵ See *Xiamen Int'l Trade & Indus. Co., Ltd. et al. v. United States*, Court No. 11-00411 (Ct. Int'l Trade August 28, 2014).

Exporter	Weighted Average Dumping Margin (Percent)
Xiamen International Trade & Industrial Co., Ltd.	5.76
Zhejiang Iceman Group Co., Ltd.	74.14
Fujian Golden Banyan Foodstuffs Industrial Co., Ltd.	74.14

Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision. In the event the Court's ruling is not appealed, or if appealed and upheld by the Federal Circuit, the Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on entries of the subject merchandise exported by XITIC, Iceman Group, and Golden Banyan using the revised assessment rate calculated by the Department in the *Remand Results* and listed above.

Cash Deposit Requirements

The cash deposit rates for Iceman Group and Golden Banyan are unaffected by these amended final results. The cash deposit rate for the PRC-wide entity, which now includes Iceman Group, will remain the PRC-wide entity rate established for the subsequent and most-recent period during which the PRC-wide entity was reviewed, which is 308.33 percent.¹⁶ The cash deposit rate for Golden Banyan will remain the rate established for the subsequent and

¹⁶ See *Certain Preserved Mushrooms from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 12150, 12151-52 & n.16 (March 4, 2014).

most-recent period during which Golden Banyan was reviewed, which is 304.89 percent.¹⁷

However, since the *Amended Final Results*, the Department has not established a new cash deposit rate for XITIC. Therefore, consistent with section 751(a)(1) of the Act, the Department will instruct CBP to collect cash deposits for entries of subject merchandise for XITIC equal to the weighted-average dumping margin listed above, which is 5.76 percent effective September 8, 2014.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516(A)(e), 751(a)(1), and 777(i)(1) of the Act.

Dated: September 9, 2014.

Paul Piquado,
Assistant Secretary
for Enforcement and Compliance.

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¹⁷ See *Certain Preserved Mushrooms from the People's Republic of China: Final Results of Antidumping Duty Review*, 77 FR 55808, 55809 (September 11, 2012).